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پراویڈینٹ فنڈ

Payment of Zakat and receiving of Interest on

Provident Fund

Compilation

Maulana Mufti Muhammad Shafi

Translated by

ANWAR AHMED MEENAI

Reviewed and certified by the committee for research on current problems.

DARUL ISHAAT

Urdu Bazar, Karachi-1

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Ask the Knowledgeable if you do not know

(Al-Qur'an)

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Provident Fund

Compilation

Hazrat Maulana Mufti Muhammad Shafi رحمة الله عليه

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DARUL-ISHAAT

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بسم الله الرحمن الرحيم

In the name of Allah, the Beneficent The Merciful

INQUIRY

1) Zaid is an employee of a Government department. A compulsory deduction of 10% is made from his salary every month. The amount so deducted accumulates for the account of the employee (Zaid) and he will be entitled to receive it only at the end of his service with the department. The calculated amount earns annual interest as well. At the end of his employment, Zaid will receive the aggregate amount together with the interest earned thereon. Is Zaid allowed to receive the interest earned on this money and can he use the amount of interest for his personal needs?

2) Bakr is also an employee of a

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Government department. He has agreed to a voluntary deduction of 10% per mensen from his salary. In the manner outlined above, the amount so accumulated in the name of Bakr also earns interest on an annual basis and at the end of employment, the employee will receive the aggregate amount, including interest. Is this situation similar to or different from the one outlined above, i.e., the interest earned will be considered riba or not? Moreover, would *Zakat* be payable on the principal amount for the prior years?

An early response will be appreciated.

Sd/-

KHAIR MUHAMMAD

Administrator,

Madrasah Khairul Madaris

Multan.

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REPLY

The issues raised in the foregoing are discussed briefly in the following paragraphs:

1) The amount earned as interest on compulsory provident fund distribution does not fall in the abmit of riba but can be considered a part of employee's salary. It is therefore legitimate to receive this amount and use it for one's personal needs. However, if contribution to the provident fund is on a voluntary basis, then the amount earned as interest is quiet similar to riba and is likely to become the means to earning interest. It is therefore recommended that the employee should forego the amount of interest and accept the principal only.

2) When the aggregate amount of the provident fund is received, then according to

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Imam Abu Hanifa, *Zakat* is not payable for the prior years. *Zakat* will be payable as per the rules after the amount has been received. Imam Muhammad, Imam Abu Yousuf and some other jurists (fuqaha) are of the opinion that *Zakat* for prior years is also payable. As such, it is desirable if *Zakat* for prior years is paid. This is based on the following reasons:

ISSUE OF ZAKAT ON PROVIDENT FUND

It is obvious that the amount of provident fund deducted from the salary of the employee is a part of his salary which has not been paid to him. As such the department (or employer) is liable to pay this amount to the employee. In respect of *Zakat*, fuqaha have divided into three categories the amounts which are called receivables. Some of these attract *Zakat* while the others do not. Let us examine the types of receivable which attract *zakat* and then only can we decide if the accumulated amount of the provident fund (being a receivable for the employee) does or does not attract *zakat*.

Receivables have been classified in the following manner by fuqaha:

I. Dain-e-Qavi

These are receivables in respect of any

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goods in trade. E.g. if A sold some merchandise to B on a deferred payment basis, then until such time that B settles the debt, a dain-e-Qavi is due to A from B. In respect of such receivables, the lender (in this case A who sold the goods on a deferred payment basis remain liable for *Zakat* for the period during which the payment from B was outstanding. Upon receipt of payment from B, A will have to pay *zakat* for the period for which the amount remained due. A loan in terms of any currency is also considered a Dain-e-Qavi.

II. Dain-e-Mutawassit

This term refers to receivables which are in respect of goods but not goods in trade. E.g. if A sells to B any used articles of a personal nature (clothes, household furniture, kitchen appliances) on a deferred payment basis, then until such time that B settles the debt, a dain-e-Mutawassit is due from B to A. Two traditions have been reported from Imam Abu Hanifa in respect of dain-e-Mutawassit. The author of Badaye has preferred the ruling that until such time that payment is received, no *zakat* is payable by A. Even after the receipt of payment no *zakat* will be payable for the period for which the amount remained outstanding.

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III. Daine-e-Zaeef

This term is used in respect of receivables which are (i) due not in exchange for any goods or services, e.g., a payment due to A on account to inheritance or on account of fulfillment of the term of B's will, and (ii) a compensation but not a compensation due to exchange of goods, e.g., the bride money payable by the husband to his wife or any amount payable by the woman to her husband if she has negotiated a separation. In respect of such receivables, the ruling is that no *zakat* becomes payable until such time that the amount has been actually received.

Allama Kasani has discussed in detailed the above mentioned classification in his work "Baday-e-Al-Sanaye" and we quote:

وجملة الكلام فى الديون انها على ثلاث مراتب فى قول ابى حنيفة رحمة الله عليه دين قوى و دين ضعيف و دين وسط، كذا قال عامة مشائخنا، اما القوى فهوالذى وجب بدلا عن مال التجارة كثمن عرض التجارة من ثياب التجارة وعبيد التجارة او اوغلة مال التجارة، ولا خلاف فى وجوب الزكوة فيه الا انه لا يخاطب باداء شى من زكوة مامضى مالم يقبض اربعين درهمًا فلما قبض اربعين درهما ادى درهما واحدا، وعند ابى يوسف و

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محمد كلما قبض شيئا يؤدى زكوته قل
المقبوض اوكثر، واما الضعيف فهوالذى وجب
له لا بدلاعن شئ سواء وجب له بغير صنعه
كالميراث اوبصنعه كما بوصية او وجب بدلا
عمّا ليس بمال كلمهرو بدل الخلع والصلح عن
القصاص و بدل الكتابة ولا زكوة فيه مالم
يقبض كله ويحول عليه الحول بعد القبض،
واما الدين الوسط، فما وجب له بدله عن مال
ليس للتجارة كثمن عبدالخدمة وثمن ثياب
البذلة والمحنة، وفيه روايتان عنه ذكر
الاصل انه تجب فيه الزكوة قبل القبض لكن
لايخاطب بالاداء مالم يقبض مائتى درهم فاذا
قبض مائتى درهم زكى لما مضى، وروى ابن
سماعة عن ابى يوسف عن ابى حنيفة انه لا
زكوة فيه حتى يقبض المائتين ويحول عليه
الحول من وقت القبض وهوا صح الروايتين عنه

"In respect of loans receivable the gist is that according to Imam Abu Hanifa, loans are of three kinds: dain-e-Qavi, dain-e-mutawassit and dain-e-Zaeef. Dain-e-Qavi is receivables in respect of goods in trade, e.g., sale of cloth / garments or slaves. There is no difference of opinion about the fact that *zakat* is leviable on such amounts. However, the lender will not be liable to pay *zakat* for the part period until such time that he has received the equivalent of 40

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Dirhams at which time he must pay 1 Durham in *zakat*. In the opinion of Imam Yousuf and Imam Muhammad whenever an amount is received, whether less than or more them 40 Dirhams, *zakat* will be payable.

Dain-e-Zaeef is any amount receivable but not against any goods or in compensation for any services and not due to any act of the person who is entitled to receive such amount. The examples are amount receivable on a account of respect of things which are not considered goods, e.g., bride money, or any amount paid by a woman to a man as part of a separation settlement, or blood money or the price paid by a slave to get his freedom. On such amounts, no *zakat* is payable until such time that the full amount has been received and one year has elasped since its receipt.

Dain-e-Mutawassit is a receivable against goods but which are not considered goods in trade, e.g., the amount receivable for sale of one's used garments. In this regard, two different opinions have been attributed to Imam Abu Hanifa. The first one is that *zakat* will be leviable before the entire amount has been received but will not be payable prior to the receipt of a minimum of 200 Dirhams or equivalent. After receiving 200 dirhams or its equivalent, *zakat* must also be paid for the

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period that elapsed between the sale of goods and receipt of money. The second has been reported by Ibn-e-Sama'a on the authority of Imam Abu Yousuf who said that Imam Abu Hanifa was of the opinion that in such cases, no *zakat* is leviable until such time that an amount of 200 dirhams or more (or its equivalent) has been received and one year has elapsed on such amount. Of the two opinions reported above the latter is considered more authentic.

After having ascertained the nature of the various kinds of receivables, let us see as to how the amount in respect of the provident due to the employee from the employer can be classified. Obviously it cannot be classified on dain-e-qavi because it is not receivable in exchange for any goods in trade. Wages or salaries of the employees are compensation for their services. Whether or not services can be classified as goods is a debatable issue. One thing is, however, certain and it is that services cannot be classified an goods in trade. This having been said and agreed, it automatically follows that any deferred payment in respect of services rendered cannot be classified as dain-e-qavi. So we are left with the other two kinds. The classification of provident fund, as one of other two kinds of

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receivables is essentially dependent upon a judgement as to whether the services can be classified an goods. It is generally accepted that services and benefits are not goods and their destruction does not attract any compensation. From this point of view, provident fund can be classified an dain-e-zaeef. On the other hand, in the matter of rent, the benefits which the lessee obtains from the leased assets have been considered goods and that is why leasing in consideration for a rent is considered permissible. If viewed from this angle, provident fund could also be classified as dain-e-mutawassit. However, as far as the levying of *zakat* is concerned, classification in either way does not make any difference. As explained by the author of Albadaye, in the cases of dain-e-mutawassit well as dain-e-zaeef, no *zakat* is payable by the beneficiary for the period for which the amount remained outstanding but was not actually received. The day such amount is received will be considered the point in time where the recipient has taken the possession of the value and *zakat* in future will be levied accordingly. No *zakat* will however be payable for the period for which the amount remained outstanding.

Despite the fact that classification of

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provident fund as dain-e-zaeef or dain-e-mutawassit does not make any difference in that no *zakat* is leviable for the past period but it may be pointed out that according to Imam Abu Hanifa while no *zakat* is definitely leviable on dain-e-zaeef for the pɔst period, but in the case of dain-e-mutawassit, some traditions attributed to him tend to argue in favour of *zakat* for the past period. It is therefore necessary that the issue is probed further to ascertain the exact classification.

The different arguments put forth tend to favour the classification of provident fund as dain-e-zaeef. The benefits in the case of a lease contract have been classified as goods or assets on account of a particular need but in the actual case these are not considered goods. Allama Kasani has, in the matter or an issue relating to bride money, stated the basis of the opinions expressed by Imam Abu Hanifa and Imam Abu Yousuf on follows:

وجه قولهما ان النافع ليست باموال متقومة
على اصل اصحابنا ولهذا لم تكن مضمونة
بالغصب والاتلاف وانما يثبت لها حكم التقوم
فى سائر العقود شرعا ضرورة دفعا للحاجة
بها (ص ٢٧٨ ج ٢)

The reason for their opinion is that benefits

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are not tangible goods according to the principles accepted by the scholars. As a consequence, no compensation is due for their loss. It is only for the purposes of certain specific contracts and for needs valid in the eyes of shariah that benefits are considered goods so that some particular requirements can be met.

Owing to the fact that benefits have been considered goods owing to a particular need, therefore these will be considered goods only under those particular circumstances and not in every situation. In the matter of *zakat*, therefore, these need not be considered goods. Any receivables which become due as a compensation for these benefits will be classified as dain-e-zaeef. In Fiqh, it is quite possible and acceptable that something which is not trinsically "goods" may be classified as such on account of a particular need. E.g., in a lease contract, benefits derived out of leased property have been considered goods but the lessee is not liable if for any reason, the benefits cease to exist.

Ibn-e-Nujaim has clarified in Behr ur Raiq that if a person allows his slave work on wages with another person then no *zakat* will be levied on such wages until such time that these have been received and remain with the

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master for a period of one year. This is despite the fact that the author of Behr ur -Raiq prefers the levying of *zakat* on dain-e-mutawassit. It can therefore be surmised that he does not consider as goods the services rendered by a slave and the same would apply to services rendered by a free man. A translation of the relevant portions from Behr-ur-Raiq is given below:

(a) If someone rents his house or permits another person to avail the services of a slave owned by him, in consideration for a compensation, and if such property and slave are not owned for commercial purposes, then the amount earned will be subject to *zakat* only after one year has elapsed since its receipt.

(b) And in the case of dain-e-mutawassit, no *zakat* is payable unless as amount equivalent to nisab has been received and whatever period has elapsed since it became due will be taken into consideration, according to authentic tradition (p. 223, vol 2, Beh-ur-Raiq).

SUMMARY

It follows from the discussion in the foregoing paragraphs that provident fund can be classified as dain-e-mutawassit or dain-e-zaeef. The opinion that it is dain-e-zaeef has

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been preferred. Based on this, no *zakat* is leviable on provident fund until received. If it is considered dain-e-mutawassit, even then according to the explanations given by Imam Karkhi (the author of Al-Badaye) and the author of Ghayat ul Bayan, the more authentic opinion of Imam Abu Hanifa is that no *zakat* will be payable for the period during which the employee had not received the payment. Allama Shami also tends to favour the same opinion. However, Ibn-e-Nujaim has preferred the opinion that *zakat* is leviable (for the past years) on dain-e-mutawassit. In the case of wages earned by a slave he has clarified that the master is not liable to *zakat* on such wages until such time that a year has elapsed following their receipt. This is provided the master is not in the business of selling the services of his slaves on wages. If this is his opinion regarding the wages earned by a slave, then it would be even more so in the case of wages earned by a free man. Accordingly, it can be conc uced that in the fiqh of Imam Abu Hanifa provident fund does not attract any *zakat* for the past years when it was not in the possession of the employee.

FURTHER CLARIFICATIONS

Doubts have been expressed by some people that the opinion expressed in the

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foregoing paragraphs is based on the primary consideration that the amount of the provident fund is not physically received by the employee and that it remains a receivable for him from the company. On the other hand, the author of Hadaya has expressed an opinion that after having rendered the services, the employee becomes the beneficial owner of the wages, whether or not physically received. This matter has been discussed on pages -- and the reader may kindly see the details there. Some people have expressed the opinion that the earmarking of certain payment for a particular employee and crediting it to his account by the employer is enough to establish the ownership of the employee and indeed, he becomes the beneficial owner of such amount. If the employee wishes, he can order the employer to pay this amount to an insurance company. It follows that the employee has become the owner (even though the physical possession of the amount has not been taken) and that like any other receivables, the amount of provident fund should also be subject to *zakat*. We do not agree with this opinion because mere paper work by the employer does not make the employee the owner of the amount credited to his account. The ownership becomes established when a person is directly or

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indirectly able to exercise his right of ownership. In the case of provident fund. the employee cannot exercise his right of ownership except that in the case of specific needs, he can obtain a loan from the employer (or trustees of the provident fund) and is likely to pay an interest on the amount borrowed. The Govt. itself does not consider the pecuniary right of the employee as his property which is in his possession. As such. The provident fund Act of 1925 (XIX of 1925) which is the law even today, states in clause No.3 that Govt. Provident Fund or Railway Provident Fund is not transferable under any circumstances, is not taxable and its proceeds cannot be adjusted under any loan or obligation of the concerned employee whether under a civil or a criminal suit. Also, under the bankruptcy law, no liquidator or administrator has any claim to the amount of provident fund. The reader may see the Sindh General Provident Fund Rules 1938, pp 29-30, 3rd edition, 1970, published by the Sindh Govt. Book Dept and reward office. The relevant portion of the act is reproduced below:

The foregoing makes it obvious that the Govt. itself considers the Provident Fund only a pecuniary right of the employee and not an amount in employees physical possession.

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The fact that the employee can assign the amount to an insurance company does not alter the nature of the receivable and does not support the argument that the employee has physical possession of the amount. If the employee requests an assignment of proceeds to an insurance company or any other company and such request is acceded to, then *zakat* will become leviable from the effective date of such assignment. This is because in this case the insurance company has taken possession of the amount in its capacity as the attorney of the employee and something in possession of the attorney is considered in possession of the person who appointed the attorney. As such, it will be deemed that the employee has taken physical possession of the amount and *zakat* will be levied. This issue has been further clarified on pp -- of the book.

In the preceding paragraphs, we have argued about the amount deducted from the salary of the employee. In the case of contributory provident funds, the employer adds a matching or a specified amount to the contribution made by the employee. The two amounts combined are then invested and earn interest which is also credited to the amount outstanding to the credit of each employee, periodically. Employer's contribution and the

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interest earned are also part of employees compensation of which the payment has been deferred. In the following section on "Interest on Provident Fund", the issue has been discussed in detail. It may, therefore, be noted that in respect of *zakat*, the amount of employer's contribution and the interest earned on the aggregate amount, will be treated in a similar fashion as the employees contribution, i.e., *Zakat* will be payable when the amounts have been actually received by the employee and no *zakat* will be payable for the year during which the amount had not been received, because the amount was "dain-e-zaeef" prior to receipt.

Imam Abu Yusuf and Imam Muhammad are of the opinion that any kind of dain (receivables) is subject to *zakat*. As such if a muslim pays *zakat* on such amounts for the prior years also, as a precaution and as an act of virtue, it is better.

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LAST FATWA OF

HAKEEM UL UMMAT ASHRAF ALI THANVI

(In respect of applicability or otherwise of zakat on Provident Fund)

In Safar 1362 A.H, just 6 months before his (Maulana Ashraf Ali's) death, and he had been ill, the undersigned, Muhammad Shafi reached Thana Bhawan. During the course of discussions it transpired that with respect to payment of *zakat* on provident fund, for the past years, 2 contradicting fatwas have been published in Imdadul Fatawa, vol. 4&5. It was brought to the knowledge of Maulana Ashraf Ali Thanvi and he directed the scholars then present to reconsider the matter afresh. Different opinion were expressed. The undersigned presented the following written opinion. Some other people were also present

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whose names cannot be recalled. After having heard the opinion, Maulana Thanvi liked it and directed the addition of a precaution which has been added at the end of the text. He also directed that the opinion expressed by the undersigned be made a part of Imdadul Fatawa. He also scribed a small note to this effect, included at the end of the text, stating that the previous fatwa may be ignored. His note is still with me in my papers.

Muhammad Shafi

22 Shawwal 1373 A.H

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CLARIFICATION SOUGHT IN RESPECT OF WHETHER OR NOT *ZAKAT* IS PAYABLE ON PROVIDENT FUND

(And whether it should be considered dain-e-qavi or dain-e-zaeef)

Question: Two contradictory fatwas have been published in Imdadul Fatawa in vol. iv (p 55) and vol. v (p. 103). In order to carry out further research, opinion expressed earlier were examined and the following opinion surfaced. The question is that which point of view should be preferred? The research is as follows:

It has been reported in Al-Badaye that according to Imam Abu Hanifa, loan receivables are of 3 kinds:

i) Dain-e-qavi (ii) Dain-e-mutawassit (iii) Dain-e-zaeef as agreed by the scholars.

Dain-e-qavi is any loan receivable against the sale of goods in trade. There is no difference of opinion in respect of levying of *zakat* on these goods. However, no *zakat* will be payable by the creditor for the period which has already elapsed until such time that he

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has taken possession of the equivalent of 40 dirhams.

Dain-e-zaeef is a loan receivable by a person as a matter of his right but not as a result of his action, e.g., his share of inheritance. It can also be a result of his action or that of another person, e.g., a will made by him. It can also be receivable against consideration which cannot be considered goods, e.g., bride-money or the money paid by the woman to her husband to negotiate a separation, or blood-money or the amount payable by a slave to win his freedom.

No *zakat* is payable in respect of the above until such time that the total amount has been received and one year has elapsed since its receipt.

Dain-e-mutawassit is the loan receivable in respect of goods not meant for trade, e.g., the price of a slave considered a personal servant or the price of ones old clothing not actually meant for sale. Two opinions have been ascribed to Imam Abu Hanifa in this respect. One is that *zakat* leviable before taking possession (i.e., for the period which elapsed between the becoming due of the amount and its receipt) but no *zakat* is payable until such time that an amount of 200 dirhams or equivalent has been received pon receipt of this amount (or equivalent) zakat will be payable for the past period as well. The second opinion has been reported by Ibn-e-Sama'a on the authority of Imam Abu

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Yousuf who has reported from Imam Abu Hanifa that in the case of such receivables no zakat is leviable until such time that an amount of 200 dirhams or equivalent has been received and then a period of one year has elapsed from its receipt. Of the two opinions outlined above, the latter is considered more authentic. Two explanations are reported to have been offered by Imam Abu Hanifa. One is that a receivable (dain) is not a property but only establishes a right in a property and entitles one to receive it, i.e., the debtor is required to give its possession to the creditor. *Zakat* is always levied on property. It is therefore logical that no *zakat* should be payable on such receivables which are not against goods-in-trade until such time that the amount has been received and one year has elapsed since its receipt. Nevertheless, receivables due against goods-in-trade should be considered as representing those goods themselves and *zakat* on these receivable should be leviable as it would have been leviable on the goods whose sale they represent. By being entitled to receive payment at a later date, the creditor is deemed to be in possession of goods which are goods-in-trade and he is liable is pay *zakat* on these good after one year has elapsed.

It can therefore be surmised that *zakat* should not be leviable on receivables of which the ownership is not perfect and which are not in the possession of the creditor. However, receivables which are against the sale of

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goods-in-trade must be considered as the goods themselves. They are indeed in lieu of such goods and the owner would have been liable to pay *zakat* on such goods if he had possessed them. As such *zakat* will also be payable on such receivables. This condition is not, however, fulfilled in certain cases where the amount receivable is not in consideration of sale of any goods (like the blood-money or bride-money) or even if it is in consideration of sale of goods, such good are not goods-in-trade (e.g., the sale of one's used furniture). In such cases the correct position is that *zakat* is not leviable until such time that an amount equivalent to nisab has been received and one year has elapsed since its receipt. This is because the receivable is on account of sale of goods which are not goods-in-trade. If such goods had been in possession of the owner, *zakat* would not have been leviable on them and therefore *zakat* will not be similarly leviable on receivables in lieu.

Shamsul Aaimma Sarkhasi, the author of Al-Mabsoot has discussed in detail the 3 kinds of receivables (duyoon) and then quoted what has been reported by Ibn-e-Sama'a which has also been confirmed by the author of Al-Badaye. Karkhi holds a similar opinion. Al-Mabsoot also mentions of the explanation by Imam Abu Hanifa which has also been reported in Al-Badaye and which has already been discussed above. It has then been

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mentioned that in respect of wages, three opinions have been attributed to Imam Abu Hanifa. One is that these are similar to the bride money in the sense that they are not a compensation in respect of the sale of any goods. These are in fact a compensation for the benefits derived from labour. The second opinion is that wages are similar to the receivables in respect of one's used articles (e.g. clothes furniture, fixtures). This a because profits or benefits have attributes of property but are not subject to *zakat.* Lastly, a more reliable tradition reports that in the case of real estate acquired for let (trading) and slave whose services are offered to others in the normal course of business, the amount of rent and wages earned are similar to receivables in respect of goods in trade. *Zakat* will be payable after an amount of 40 dirhams (or equivalent) has been received.

It has been mentioned in Behruraiq that if the services of a slave are sold to others for monetary consideration or if real estate is rented out, but if these are not for trading purposes, then no *zakat* is payable until such time that one year has elapsed after its receipt. However if these are for business purposes, then the amount receivable is like dain-e-qavi. This is because any rent or wages

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earned through real estate or labour for business purposes are like receivables due for goods in trade.

It has been stated in Minhat ul Khaliq (in the margin) that the opinion purporting that such receivables are dain-e-qavi is contrary to what has been mentioned in Moheet. It has been argued that in respect of goods in trade and slave, the benefits of whose labour are sold to another party, there are two opinions. One is that no *zakat* is payable on such receivables until such time that these have been received and one year has elapsed because benefits are not actually a property. Therefore this is similar to bride-money. The other opinion is that *zakat* is leviable on such receivables but it becomes payable when an amount of 200 dirhams or equivalent has been received. The reason is that the money is in exchange for benefits which partake the characteristics of property but are not a zakatable property.

According to Imam Abu Hanifa, based on the first opinion such receivables are dain-e-zaeef and based on the second opinion, these are dain-e-mutawassit (and not dain-e-qavi). Benefits are not subject to *zakat* even though they partake the characteristics of property.

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I also referred to walvajeeh which has clearly stated 3 opinions. The matter need to be deliberated. (Minhat ul Khaliq on Al Bahr. p. 208, vol. 2)

The foregoing shows that Imam Abu Hanifa has classified debts or receivables into 3 categories viz., qavi, mutawassit and zaeef. Qavi is the debt receivable against goods in trade or against bullion (gold, silver). Mutawassit is the debt due not on account of goods in trade or bullion, but against say sale of household goods (e.g., furniture). Dain-e-zaeef is debt not due in consideration of any tangible thing but is still an obligation on a person, e.g., mehr (bride-money). In respect of dain-e-qavi, *zakat* is payable every year irrespective of its physical receipt, provided an amount equivalent of 40 dirhams has been received. When *zakat* is being paid, it will be paid for past years as well. On the other hand in respect of dain-e-zaeef, unless a year has passed from the time of its receipt, no *zakat* is payable. With respect to dain-e-mutawassit, 2 different opinions have been reported from Imam Abu Hanifa. One is that *zakat* will be payable for the past years also but only after an amount equivalent to nisab (200 dirhams or 52.5 tolas of silver) has been received, i.e, unlike dain-e-qavi where

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receipt of equivalent of 40 dirhams makes the payment of *zakat* compulsory. Nevertheless, *zakat* for past years is payable. The second opinion is that dain-e-mutawassit is like dain-e-zaeef such that no *zakat* is payable for the past years and it will be after one year from the receipt that *zakat* will become payable. The author of Badaye has stated that the latter is a more correct account of Imam Abu Hanifa position in the matter.

Therefore, the opinion of Imam Abu Hanifa can be summarised as follows:

a) an amount receivable against goods in trade or bullion, (called dain-e-qavi) is zakatable for the period for which it remained outstanding but the payment is to commence after an equivalent of 40 dirhams has been actually received.

(b) a receivable in respect of will or an account of heirship which is not a receivable in consideration of any goods or services, or bride-money (which are known as dain-e-zaeef) is not zakatable for any past years and *zakat* will be levied only after a year has passed after the receipt of such money; and

(c) sale of household furniture, which are known as dain-e-mutawassit, are zakatable

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only after a year has elapsed after their receipt, ie., they are not zakatable for the past years. It must however be noted that if a person is already in possession of some zakatable assets, then any further receipts will be added to the assets already in his possession and *zakat* will be levied on the entire zakatable assets. If no zakatable assets are already in obsession of a person then *zakat* on receipt of dain-e-mutawassit and dain-e-zaeef will be levied only after an equivalent of 200 dirhams or 52.5 tolas of silver has been accumulated and a year has elapsed on such money.

The issue to examine now is what category does the amount of provident fund payable by the employer to the employee, fall.

It is clear that such amount cannot be classified as dain-e-qavi because it is not a receivable against any goods in trade but a compensation for services. As is evident from the observation in Behr-ur-raiq, if a slave or a property is not for trade then a compensation for his (slave's) services or a rental for the property cannot be classified as receivable against goods in trade. As such, there is no basis for classifying the services of a free man as goods in trade.

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There are then two possibilities. One is that services are classified as goods and so the receivables against them are classified as "dain-e-zaeef". Traditions reported from Imam-e-Azam point towards both possibilities. As explained in Minhat-ul-Khaliq, on the strength of Muheet, the preferential position is that services be classified as goods and receivables in consideration of services rendered be classified as "dain-e-mutawassit". It has been reported in "Mabsoot", that services or utilities are not goods per se. Therefore if wages are receivables for services rendered by a slave whose services are normally offered to other people for monetary consideration or if property is owned for renting out, then the services of such slave or benefits derived from such property are goods. In other cases they will not be classified as goods. In the first case, any receivables will be classified as "dain-e-qavi" but otherwise they will be classified as "dain-e-zaeef". This position has been accepted in "Mabsoot".

In summary, services or benefits can be classified as goods (and receivables against these can be considered as "dain-e-qavi") if and only if these are the services of a slave which are normally and regularly offered to others for monetary considerations or benefits

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derived from a property let out to earn money. Other than these, no receivables in consideration of services rendered can be classified as "dain-e-qavi". It is obvious that the amount of provident fund deducted from employee's salary or contributed to such fund by the Govt. as bonus cannot be classified as dain-e-qavi. This leaves only two possibilities, viz, its classification as "dain-e-mutawassit" or dain-e-zaeef". To classify as "dain-e-mutawassit" is also inappropriate in that the tradition reported in Minhat ul Khaliq on the strength of Moheet relates to the services rendered by a slave. There is no mention of services rendered by a free man. The services of a free man cannot be classified in the same manner as the services of a slave. According to the explanations by fuqaha, services of a slave are goods in trade but the services of a free man are not. Based on this, the amount of provident fund can be classified as "dain-e-zaeef". For argument sake, even if it were to be classified as "dain-e-mutawassit" then the correct position attributed to Imam Abu Hanifa is that with respect to *zakat*, "dain-e-mutawassit" is similar to "dain-e-zaeef" and no *zakat* is payable for past years. This has been discussed in detail in Albadaye.

It follows that the amount receivable by

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the employee on account of provident fund cannot be considered "dain-e-qavi". To classify it as "dain-e-mutawassit" would also be dependent on whether the services of a free man can be classified as goods in trade. As an extreme case, even if Provident Fund could be considered "dain-e-mutawassit", the correct position attributed to Imam Abu Hanifa appears to be that no *zakat* is leviable for the past years.

Caution:

Having considered the opinions of fuqaha and after deliberating on the matter, it is my humble opinion that no *zakat* is leviable for the past years, on provident fund. As a precaution, opinion may besought from other scholars. Moreover, in the opinion of Imam Abu Yusuf and Imam Muhammad, the classification of receivables as qavi, mutawassit and zaeef is of no consequence and *zakat* is in any case payable for the past years. As such if as a precaution and an act of virtue, one pays the *zakat* for the past years too, it is better. Probably, on account of this difference of opinion, it has become a practice in some cities in India that bride money payable is specified in term of takas and dinar, equivalent to a sum in rupees (e.g., 80,000 takas, 2 red dinars is the equivalent of two

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thousand and five hundred rupees). Allah the Gracious and Elevated is all Knowledgeable.

Sd/=
Muhammad Shafi
Darul-Uloom,
Deoband
12 Safar 1362 A.H.

I concour with the research carried out by you people and agree with the opinion as expressed therein. I also renounce any opinion previously expressed by me to the contrary.

Sd/=
Ashraf Ali
13 Safar 1362 A.H.

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INTEREST ON PROVIDENT FUND

Another question is about the extra amount which is paid by the employer, together with and as a part of provident fund dues of the employee which comprises employers contribution, interest on the amount contributed by the employee (and employer, if it is a contributory Provident Fund), or both. To understand the issue, it must be understood that interest and riba is on account of a contract between two or more parties. On the other hand, as discussed in the preceding paragraphs in the matter of *zakat*, provident fund is in fact a part of the compensation for the services rendered by the employee which he has not received. Therefore this amount is payal le to the employee by the employer. Until such time that the employee himself or through an agent takes physical possession of this amount, it is not in his control. According to the discussions in Al Behr ur Raiq, until such time that the worker

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has physically received his wages, these are not property in his control. It is only a right to claim. Thus writes Allama Ibn-e-Nugaim, "The statement by the author is that the wages for labour can become the property of the labour in one of the following manner:

1) He receives them in advance;
2) He fulfills certain conditions and then receives the amount;
3) He performs under the contract and receives the payment; and
4) These become receivable but the payment is deferred and received later.

Unless one of the above conditions is satisfied, the labour does not become entitled to wages and these cannot be considered his property. Imam Qudoori has also hinted at this issue in his treatise - If the amount is considered a receivable, it will not considered as the property of the person to whom it is due. He becomes entitled to receive it. He will also have the right to claim it. The person who employed the labour would have the right to defer or with-hold. The labour would have the right to terminate the contract if the payment is not promptly made by the employer or

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unreasonably withheld. Similarly it has been stated in Al-Moheet that the labour cannot sell in advance anything which, though he may be entitled to receive it, he has not actually received. (Behr ur-Raiq p. 327, vol. VII).

It is therefore obvious that any part of the compensation not in possession of the employee is not a property in his control and not available to him for any kind of exchange. It is for this reason that the employee cannot sell the part of this compensation which he does not physically possess.

Once it is established that the amount of provident fund is neither physically possessed by the employee nor can he offer it in any exchange, then whatever use of the amount is being made is by the employer in whose possession and control the amount is. The employee has nothing to do with it. As discussed in Al-Behr ur Raiq, the employee cannot offer this amount in any exchange and for the same reason the employee cannot become a party to any contract for the lending of this amount on interest. Whatever is being done to this amount is a decision of the employer and his full responsibility. The employee is not responsible in the matter in

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any degree. The amount being invested is not in employee's physical possession nor is the employer acting in the capacity of employee's agent. As such, when the employer settles his debt with the employee on account of employee's contribution to the Provident Fund, and adds any amount to the contribution made by the employee whether such addition is on account of employer's contribution or a result of interest earned periodically or both, then whatever is added is employer's voluntary and one sided act. Even if he did, it would be null and void because it relates to an amount which is not in employee's control.

In view of the foregoing, it is obvious that the increased amount paid by the employer does not fall in the ambit of riba, even though the employer may choose to call it Riba. The question is that if this amount is not riba, what is its nature in the parlance of fiqh? It seems that this amount can be classified in either of the two ways. One, it could be considered a bonus, in that the employer pays an additional amount voluntarily. There can be an objection that if this amount is a bonus and its payment is a voluntary act on employers part, then no legal recourse should

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be available to the employee if it is not paid. In actual life, we know that the employee can legally enforce his right to claim and receive this amount. As such it appears difficult to classify this amount as bonus. The second choice appears to be more appropriate and that is to consider the amount as the deferred payment of a part of salary / wages. There can be an objection that at the time of the contract between the employer and employee, the whole or a part of this amount may be indeterminable. If such indetermination is not going to result in a dispute later on, then it would not affect the validity of the contract. In our opinion there are grounds in shariah which enable the employee to receive this amount and use it for his personal needs.

COMPULSORY AND VOLUNTARY FUNDS

From the foregoing, it would appear that whether contribution to the provident fund is compulsory or voluntary, the excess amount paid by the employer would not be considered riba. In the case of voluntary deductions, it may be pointed out that the excess amount becomes close in nature to Riba. There is also

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the danger that this may develop into a means of earning interest. As such, in the case of voluntary Provident Fund, it is recommended that the excess amount should not be used for ones personal needs. One may opt not to receive it from the employer or receive it and distribute it as charity.

RULING BY
MOULANA ASHRAF ALI THANVI

In respect of interest on Provident Fund the issue of interest on Provident Fund has been discussed in Imdadul Fatawa (vol. III, p. 123). some portions are being reproduced here.

QUESTION

The Govt. has inquired that every Govt. employee agrees to the deduction of 6 1/2 to 12 1/2 % of his salary per mensen and pays it to the Govt. such that when the employee attains the age of retirement or resigns the job, the total amount accumulated upto that date is paid to the employee together with 4% p.a. interest.

ANSWER

To agree to the deduction of any part of one's salary and then receive it in lump-sum together with interest is permissible. The

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amount called interest is not riba because part of the salary not received by the employee does not become his property. Therefore the excess amount earned by the Govt. and paid to the employee is not on account of any profit earned on the property of the employee. The excess amount may be more appropriately classified as bonus even though the Govt. may call it interest.

27 Zilhij 1327 A.H.

In reply to another question, Moulana Thanvi ruled "It is permissible to receive the excess amount and it is not interest

27 Jamad II 1337 A.H

Answering another question, he say, "it has been my considered opinion for some time that the excess amount is bonus and does not become illegitimate because it is termed interest".

8 Zilhij 1338 A.H..

CLARIFICATION OF A DOUBT

With respect to interest on Provident Fund, Moulana Thanvi had until 1340 A.H. maintained the opinion that it is not Riba in shariah and it is permissible to accept and use this money for one's needs. However, in volume V of Imdadul Fatawa, under the

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caption of "Most preferred preferences", it appears that Moulana had changed his opinion while replying to a question by a scholar. The question and answer are as follows:

QUESTION

Some Govt. Employees agree with the Govt. and execute documentation to the effect that an amount of say Rs. 10/= be deducted from their monthly salary and after 20 years the amount so accumulated by paid to them lumpsum. The govt. starts to make deductions. If the employee is alive at the end of 20 years the accumulated amount is paid to him in lumpsum but he is not allowed to withdraw it earlier. If the employee dies, then without any condition, the Govt. pays to the heirs of the deceased an amount which is equal to the amount that would have been accumulated in 20 years. The employee may pass away after only two months of making such arrangement. If he survives, then at the end of 20 years he is paid the accumulated amount together with some extra. Some people say that this is speculation even though, by definition, it does not appear to fall in the category of speculation because there is no

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exchange of value between the parties in that the part of salary not paid to the employee and not received by him cannot be considered his property as explained on p. 35 of Hawadisul Fatawa. Please comment on the legitimacy or otherwise of the matter. Further, kindly clarify the doubt that according to book on fiqh, in a lease contract, the rent is considered to have been earned if one of the three conditions is satisfied, i.e., payment on demand, agreement to payment on demand or utilizing of the benefits. Now, if an employee has worked for one month, then the employer has benefitted from employee's services for one month. Therefore the employee should be deemed to have earned the wages for one month even though he may not have received it. Besides, even though there is no explicit agreement to pay on demand, but based on the practice (which is considered a law) why should the matter be not considered on the same basis. The employment contract also supports this point of view that the employee can refuse to work in case of employer's failure to pay his monthly salary. What should be the treatment of the part of the salary which has not been received by the employee and is not his

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property? Kindly also explain if this principle is limited to wages only or does it apply to all lease contracts?

ANSWER

The focal point with respect to the permissibility of such receipts is that the property of a belligerent with his consent can be accepted, through any reason. Scholars who belong to this school of thought argue about the permissibility of all such contracts. Personally, I had desired that the matter be considered in the light of a ruling in which there is no reported difference of opinion among leading scholars. I thought about the explanation offered by the author of Hawadis but in the process lost sight of the fact that if a right to claim something contracted for is established, it establishes the ownership of the person who has the legal claim. Off and on, there was a feeling of uneasiness about this ruling. Now that you invited the attention to the matter, (May Allah reward you) I again referred to the source. I realise that the premise on which my previous ruling is based, is defective and does not support the argument. As such, the matter can be decided on the basis of first explanation but in which there is a difference of opinion. I am unable to understand your query about the payment on

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demand. It would apply only if the payment is made before utilizing the benefits, and this is not the case in this situation. (19 Jamad I, 1342 A.H. vol. V p. 137).

POINT TO PONDER

A point worth considering here is that in respect of *zakat*, the author of Al-Badaye has clarified that prior to receipt, wages are not the property of the labour. Even if it can be considered property in some degree, it is de jure (and not defacto) in that it is due to the labour. In Hadaya, in the chapter relating to lease, it is stated that the rental becomes the property of the lessor after he has passed on the benefits to the lessee. In his words, "when the benefits have been fully utilized by one party the compensation due becomes the property of the other party. Apparently the authors of Al-Badaye and Al-Hadaya contradict each other.

To reconcile the two, and after giving the matter further thought, it appears that the author of Hadaya also insplies that rent / wages prior to receipt are property de jure and not defacto. It is apparently for this reason that Imam Qudoori has not mentioned about these becoming the property of the labour but becoming a right due to him and which he can

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claim. The author of Al Hadaya has stated that a claim is established after one of the three conditions has been met and that includes the performance of an (agreed) act by the labour. Also the author of Al-Hadaya has titled this section as "in respect of wages when these become due" and NOT when these become the property (of the labour).

Subsequently, the section on leases in Behr ur Raiq referred to and the abovementioned opinion was confirmed. Ibn-e-Nujaim the statement by the author is that the wages labour can become the property of the labourer one of the following manner.

1) he receives them in advance;

2) he fulfills certain conditions and then receives the amount;

3) he preforms under the contract and receives the payment; and

4) these become receivable but the payment is deferred and received later

Unless one of the above conditions is satisfied, the labourer does not become entitled to wages and these cannot be considered his property. Imam Qudoori has also hinted at this issue in his treatise - If the amount is considered a receivable, it will not considered as the property of the person to

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whom it is due. He became entitled to receive it. He will also have the right to claim it. the person who employed the labour would have the right to defer or with-hold. The labour would have the right to terminate the contract if the payment is not promptly made by the employer or unreasonably withheld. Similarly it has been stated in Al Moheet that the labour cannot sell in advance anything which, though he may be entitled to receive it, but has not actually received. (Behrurraiq p. 327, vol. vii).

It is clear from this explanation in Behur Raiq that there is no contradiction between Badaye (chapter on *zakat*) and Hadaya (chapter on leases). The author of Hadaya has implied the same thing, i.e.. a right to claim and not a right of ownership. In any case, ownership de jure (which is similar to a right to claim) does not affect the ruling that the addition to the amount of the provident fund is not interest. It is apparent in these cases that whatever has been earned by the employer on the amount of the provident fund through its investment is the ownership of the employer and is the result of utilization of assets owned by the employer, not by the employee. As such, if the employer parts with any of its property and gives it to the employee, then it is like a bonus or an ex-gratia payment. Having deliberated on the matter, it appears that the first ruling by Moulana Ashraf Ali is correct and he has not distinguished between voluntary or compulsory provident funds. Obviously, in his

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opinion, any addition by the employer, in the case of either, is not interest. However in the case of voluntary provident funds, such addition partakes the characteristics of interest. People who are generally not aware of the intricacies of the matter, may adopt this as a means of earning interest. Therefore, in the case of voluntary provident funds, it is preferable that such addition in foregone by the employee. This is what my opinion is and complete knowledge is possessed only by Allah.

IMPORTANT PRECAUTION

If an employee assigns the Provident Fund to an insurance company or if the fund is managed by a committee, with the consent of the employee, as is the practice in some non-government organizations, then this is tantamount to receipt of the proceeds by the employee and then assigning it to the insurance company or to the committee. Therefore any amount credited as interest shall be considered interest and it is prohibited to receive and consume this amount for one's own need. This is because in such cases the insurance company or the committee acts as the agent of the employee and agent's possession is principal's possession. It is prohibited to accept any interest on salary after it has been received.

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This amount is in the nature of a loan to the insurance company. Therefore *zakat* for prior years shall also be payable on such amounts - payment shall, however, be effected only after the equivalent of 40 dirhams has been received. Any amount assigned to a committee or a trust is trust (amanat) and *zakat* is leviable with immediate effect, not on receipt.

Muhammad Shafi

7 Rabi I, 1385

Signature of the members, committee for research on current problems

Sd/=

Muhammad Yousuf Binaori
Incharge, Madarasa-e-Arabiatul Islamia, New Town Karachi

Sd/=

Rasheed Ahmed
Incharg -Madrasa-e-Ashraful Madaris, Nazimabd Karachi.

Sd/=

Muhammad Ashiq Elahi
Teacher, Darul-Uloom, Karachi

Sd/=

Muhammad Rafi Usmani
Teacher, Darul-Uloom, Karachi.

Sd/=

Muhammad Taqi Usmani
Teacher, Darul-Uloom, Karachi.

Sd/=

Wali Hasan Taunki
Teacher & Mufti
Madarsa-e-Islamia Karachi.

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APPENDIX

SUPPLEMENT

A note on issues relating to *zakat* and interest on Provident Fund

Maulana Muhammad Rafi Usmani
Professor of Hadees
Darul-Uloom, Karachi.

Praise be to Allah and peace be upon the distinguished human-beings.

The foregoing is a comprehensive research on the issue of *zakat* on Provident Fund and profit earned on this amount. This appendix contains a summary of the various issues relating to the matter. Some of the issue are quite clear but inquiries are made in respect of these too. A discussion on these has therefore also been included. The issues discussed in the following paragraphs are equally applicable to Govt. and non-Govt. employees.

I. In the case of a compulsory Provident Fund, the amount deducted from the salary of the employee, the amount contributed by the employer and the amount added to the

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aggregate of the two, by way of interest, periodically, fall in the same category. These are all parts of the employee's salary and it is permissible for him to receive this amount and use it for his needs. In the eyes of Shariah, no part of this amount is interest. However in the case of voluntary Provident Funds, the amount credited by the employer by way of interest should be avoided as it is very much in the nature of riba and may become a medium of legitimising interest. It is upto the individual to either not receive it at all or receive it but spend by way of sadaqah.

Caution:

If an employee, not aware of the ruling in the case of compulsory Provident Funds, thought that the excess amount paid by the employer is interest and then entered into such a contract on the basis of interest, then, even though the excess paid to him is legitmate but the employee should repent for his intention to receive interest. 1 (1. And this is not limited to Provident Fund but is applicable in all cases where a legitmate thing is being used with the intention of committing an illegitimate act. For example, if meat or beef is being cooked with the intention that pork is being used, then, even though meat is allowed, but the intention with which it was being used

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is illegitimate and one must offer repentance.)

II. Whatever has been discussed in I above is applicable when the employee has not assigned the amount of Provident Fund to another individual or company but the amount has been retained by the employer under his control or has been assigned to another individual or company under his own liability. If the employee assigns the amount to another individual, bank, insurance company or any other permanent committee (e.g., a Board of employee s representatives or Trustees) then this is tantamount to receiving the amount and then giving it to the other party. In this case, if the bank or the company (i.e., the other party) pay any interest then this will be considered interest and it is not permissible for the employee to receive it. This is whether the Provident Fund is compulsory or voluntary.

III. In case the employee assigns the amount to a trading company or a Board comprising employees representatives on the condition that the amount would be used for any (legitimate) business and profit or loss would be shared in an agreed proportion (i.e., if the business suffers a loss then the employee would bear a portion of it and if

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there is a profit, the agreed percentage of the profit would be earned by the employee) then whatever profit is earned by the employee would be legitmate. Whether the Fund is compulsory or voluntary, it is permissible in both cases to receive the amount and use it for one's needs.

IV. The amount deducted from the salary towards the contribution to Provident Fund, the amount added to it by the employer and the interest credited to the aggregate, periodically, are not subject to *zakat* for the years when the employee had not taken possession or control of the amount, according to Imam Abu Hanifah. When received, the amount is subject to *zakat* as per the details discussed in the following paragraphs. According to Imam Abu Yousuf and Imam Muhammad, *zakat* for pervious years will also be leviable upon receipt of this amount. Accordingly if one pays the *zakat* for previous years upon receipt of this amount, as a precaution and act of virtue, it is better and desirable. Non-payment would, however, not be considered wrong because ruling in the matter is based on the opinion of Imam Abu Hanifah. This is applicable to both compulsory and voluntary Provident Funds.

V. The foregoing is applicable only if the

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employee has not willingly and under his responsibility assigned the amount of Provident Fund to another person or company. If this has been done, i.e., the amount of the Provident Fund has been assigned to another person, or bank, or an insurance company, a commercial concern or a Board comprising employees representatives (or trustees in todays parlance) then this is tantamount to taking possession of the amount. In such cases the entity to which the amount has been assigned become the agent of the employee and possession taken by the agent is legally considered possession taken by the principal. Therefore *zakat* will become leviable from the time that such assignment becomes effective and *zakat* for every year must be paid accordingly.

VI. Similarly, if the employee assigns the amount of the Provident Fund to a business so that his funds are employed by the business on a profit / loss sharing basis, then zakat becomes leviable from the time, the assignment becomes effective. *Zakat* for every year should be paid according to rules. When profit is received, this will also be subject to *zakat*.

VII. When the amount is received by the employee or his agent, then, according to

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Imam Abu Hanifah, *zakat* will be levied on on such amount in the same manner as it is levied any new *zakat*able assets (in one's beneficial ownership). The rules in this regard are as follows:

a) If the employee was not liable to pay *zakat* (i.e., was not a sahib-e-nisab) and the amount of provident fund was not enough to put him in the category of sahib-e-nisab, then no *zakat* is payable.

b) if the employee was not a sahib-e-nisab but as a result of receipt of the amount of Provident Fund becomes sahib-e-nisab then *zakat* will be leviable after one (lunar) year has passed since receipt of this amount. After completion of one year too, *zakat* will be leviable if the person is still sahib-e-nisab. If, before the completion of the year, the amount has been spent or is lost due to any reason, wholly or partially, and if the remaining portion is less than nisab, then no *zakat* will be leviable. In case, despite the decrease, the remainder is equal to or more than nisab then *zakat* will be leviable only on the amount which remains with the employee. No *zakat* is leviable on the amount which was spent or lost otherwise.

c) If the employee was a sahib-e-nisab even

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before the receipt of this amount, then whether the amount of Provident Fund received is equal to, less than or more than nisab becomes subject to *zakat* with immediate effect, i.e., before the completion of 1 year, even though only one day may have passed. E.g., if a person was in possession of Rs. 100,000 for one year and just one day before the completion of the year received another Rs. 50,000 then *zakat* on Rs. 150,000 will become leviable on the very next day.

VIII) If a person was sahib-e-nisab prior to the receipt of funds and received the amount of Provident Fund 4 months before the completion of 1 year but certain amount was spent during the 4 months, then *zakat* will be levied on the remainder if it is equal to or more than nisab. No *zakat* will be levied on the amount that was spent. If the remainder is less than nisab, then no *zakat* will be levied.

IX) The above mentioned rules in respect of *zakat* are based on the opinion of Imam Abu Hanifah. As a precaution, if *zakat* for prior years is also paid (as is the opinion of Imam Muhammad and Imam Abu Yousuf) then it is better and desirable. To do this, one must ascertain the point in time when he became sahib-e-nisab. One year from that time, the amount of Provident Fund standing to one's

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credit should be added to the total value of zakatable assets and *zakat* should be paid. This should be done every year.

X) It is stated that in case of need, a part (or whole) of the Provident Fund amount standing to one's credit is given as a loan for a specified period. In the subsequent months, the loan amount is recovered in monthly installments, together with interest and this deduction is added back to the employee's Provident Fund. As such, the decrease in the amount of employee's Provident Fund is made-up. In the end, the entire amount is paid to the employee. Even though the loan is considered an interest based loan and contracts are drawn up as such but from the point of view of Shariah, it is neither a loan nor an interest based loan. The former because the amount loaned to the employee was actually an amount due to the employee by the employer (albeit at the end of employment) and the employee had a right to claim this amount. The amount of subsequent deductions, considered the repayment of loan is not a repayment of loan in the true sense but a means to make-up the reduction in the employee's Provident Fund amount. This deduction can be considered a normal deduction similar to the deduction towards the

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Provident Fund. The amount so deducted is added back to employee's contribution and is paid to the employee at the end of employment.

The reason that the amount deducted as interest is not considered interest from the point of view of Shariah is that interest is paid to someone else while in this case this amount is also returned to the employee. As such, it is permissible for the employee to obtain a loan in the manner discussed above.

XI) As discussed in the foregoing, the amount that is loaned to the employee out of his own provident contribution is not a loan in the eyes of Shariah. On the other hand it is a (part) payment of the amount due to the employee. As such *zakat* will become payable on the amount thus borrowed in accordance with the rules discussed in VII to IX.

XII) Whatever deductions are made by the employer from the subsequent salary payments to the employee, on the pretext that the deduction is the repayment of the principal and interest thereon is neither in the eyes of Shariah. The deduction is very much in the nature of any other deduction in respect of Provident Fund and a part of the amount due to the employee by the employer. Therefore the

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rulings discussed in the preceding paragraphs in respect of *zakat* and interest on such amounts would apply.

In this regard, a ruling by Maulana Ashraf Ali Thanvi which has been published in Imdadul Fatawa is being reproduced below:

RULING BY MAULANA ASHRAF ALI THANVI

QUESTION:

In some departments, the Govt. makes a compulsory deduction from the salary and approximately an equivalent amount is contributed to by itself which is called interest. The amount thus accumulated is repaid to the employee upon his retirement. If the employee needs it in between, as amount equivalent to 3 months salary of the employee is lent to him and such amount is recovered in 24 monthly installments together with interest. The interest charged to the employee is credited to employees account so as to make-up for the reduction in the amount of his interest earnings due to the withdrawing of a part of

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the Provident fund. Is it allowed to borrow the money in such manner because interest is payable on the loan even though the amount of interest is credited to the employee).

ANSWER:

There are two aspects worth considering in this question, First is the taking of interest from the Government on a part of one's salary. In this matter, there is a difference of opinion. therefore, the taking of interest may be considered permissible for the person who is subjected to a compulsory deduction of the Provident Fund. Second is the giving of interest which is borrowed in the interin and in this matter there is no difference of opinion. The first consideration pertains to the taking of interest while the second relates to the giving of interest which is clearly prohibited. However, one possible interpretation could be that the employee does not borrow but in fact takes in advance a part of the amount due to him by the Government, to which he is entitled. Then when the employee repays the amount, the repayment is not towards the loan but is again a loan to the Govt by the employee (as is the amount of Provident Fund normally deducted). The amount so repaid is the property of the employee. Interest is always paid on money or goods belonging to

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another party and not to oneself. Therefore whatever has been termed interest is not interest and therefore its payment as such is not tantamount to payment of interest.

The payment of such amount is permissible. In fact the receiving of interest on Provident fund may be debated and can be subject to a difference of opinion but the payment in the manner and on the grounds discussed above may be considered as being on the basis of a consensus. Albeit, the amount of interest that the employee will receive at the end of his service would again be subject to debate, as discussed earlier and Allah knows the best. (Imdadul Fatawa Vol. 3, p. 111-12 Shawwal 1352 A.H. Al-noor p. 9. Rabi I, 1354 A.H).

The issues discussed above have been enumerated in as lucid a style as possible. Even then, if there is any confusion, it is recommended that the matter may be discussed with scholars in ones vicinity.

Written by: Muhammad Rafi Usmani

Darul-Ifta-Darul Uloom, Karachi

Dated 15 Moharram 1393 A.H.

Signed by members, of the committee for research on current

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Affairs in token of confirmation of what has been written in the foregoing:

1) Muhammad Yousuf Binaori.

Incharge. Madrassa-e-Arabia, New Town

2) Muhammad Ashiq Elahi.

Teacher, Darul-Uloom, Karachi.

3) Muhammad Taqi.

Teacher & Editor Albalagh. Darul Uloom, Karachi.

4) Muhammad Shafi

5) Rasheed Ahmed.

Incharge Ashraful Madaris, Nazimabad.

6) Wali Hasan Taunki.

Mufti, Madrassa-e-Islamia, Karachi.